

# Improving Job Opportunities for Americans with Disabilities

## Background

On December 9, 2011, the U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) published a Notice of Proposed Rulemaking (NPRM) in the *Federal Register*. OFCCP is seeking public comment on a proposal to revise and update the regulations implementing Section 503 of the Rehabilitation Act of 1973, as amended (Section 503).

Section 503 prohibits employment **discrimination** based on disability by companies doing business with the federal government. Section 503 also requires that federal contractors and subcontractors take **affirmative action** to recruit, employ, train, and promote qualified individuals with disabilities.

Prior to issuing this NPRM, on July 23, 2010, OFCCP published an Advance Notice of Proposed Rulemaking (ANPRM) requesting public comment on ways to strengthen the affirmative action regulations in Section 503. Comments received on that ANPRM helped shape the rule now proposed by OFCCP.

## Need for the NPRM

- The framework articulating contractors' Section 503 responsibilities has remained unchanged since the implementing rules were first published in the 1970s.
- The most recent data from the U.S. Department of Labor's Bureau of Labor Statistics (BLS) indicate that the unemployment rate and degree of participation in the labor force of working age individuals with disabilities remain significantly higher than for those without disabilities.
  - BLS data show stark disparities facing working-age people with disabilities, with 79.2 percent outside the labor force altogether, compared with 30.5 percent of individuals without disabilities.
- Strengthening the Section 503 regulations is an important tool for reducing barriers to equal employment opportunity for individuals with disabilities.
- Prior to issuing this NPRM, OFCCP conducted town hall meetings, webinars, and listening sessions with individuals from the contractor community, state employment services, disability and veterans' organizations, and other interested parties. We obtained input on the features of the current regulations that work well, as well as those that need improvement. We also received suggestions for new requirements to help achieve the objective of increasing employment opportunities for individuals with disabilities.

## Highlights of the NPRM

**GOALS:** Establish, for the first time, a single, national utilization goal for individuals with disabilities. Federal contractors and subcontractors would be required to set a hiring goal of having 7 percent of their employees be workers with disabilities in each job group of the contractors' workforce. The goal is neither a quota, nor a restrictive hiring ceiling, and a failure to attain the goal does not necessarily constitute a violation of Section 503 or OFCCP's regulations. The goal will serve as an important tool for employers to measure their progress toward achieving equal employment opportunity, and for assessing where in their workforce barriers to such opportunity remain.

**DATA COLLECTION:** Improve collection of data on employment of people with disabilities by modifying the invitation for workers to self-identify by requiring that contractors invite all applicants to voluntarily self-identify as an "individual with a disability" at the *pre-offer stage* of the hiring process. Contractors will also be required to invite *post-offer* voluntary self-identification, and to survey all employees annually in order to invite their self-identification in an anonymous manner. Collection of this enhanced data will allow the contractor and OFCCP to better identify and monitor employment practices with respect to individuals with disabilities. The NPRM provides that OFCCP will prescribe the language that contractors will be required to use when inviting self-identification and publish it on the OFCCP website. The NPRM also seeks public comment on proposed text for an invitation to self-identify.

**RECORD-KEEPING:** Require that contractors maintain records on the number of individuals with disabilities applying for positions, and the number of individuals with disabilities hired. This provides contractors and OFCCP with important information that does not currently exist, and aids contractors in evaluating and tailoring their recruitment and outreach efforts.

**ACCOMMODATION REQUESTS:** Require, for the first time, that contractors develop and implement written procedures for processing requests for reasonable accommodation. Such procedures will assist contractors in consistently satisfying their reasonable accommodation obligations. These new procedures will also ensure that job applicants and employees receive clear instructions on how to request reasonable accommodation, the maximum amount of time for processing a request and, if the request is denied, the reason for the denial.

**OUTREACH:** Require that contractors engage in a minimum of three specific types of outreach and recruitment efforts; review, on an annual basis, the effectiveness of these efforts in identifying and recruiting individuals with disabilities; and document this review.

**JOB LISTINGS:** Require that contractors list job openings with one-stop career centers or other appropriate employment delivery systems, as is currently required for protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act of 1974.

**ANNUAL REVIEWS:** Require previously recommended steps contractors must take to review their personnel processes, as well as physical and mental job qualifications. Contractors would be required to conduct both of these self-reviews "annually," rather than "periodically," and to document specific review actions and their results.

**ADAAA UPDATES:** Incorporate updates made necessary by the ADA Amendments Act (ADAAA) of 2008 and subsequent amendments to the Equal Employment Opportunity Commission's (EEOC) regulations implementing the Americans with Disabilities Act (ADA).

## Additional NPRM Topics

OFCCP invites public comment on any of the changes to the regulations in the NPRM. In addition, the OFCCP invites the public to comment on select topics related to the proposed regulatory changes, including:

- The proposed text of the voluntary self-identification invitations that contractors would use when asking an applicant or employee to identify as an individual with a disability;
- The possible inclusion of a 2 percent sub-goal for individuals with certain particularly severe or targeted disabilities. OFCCP seeks comment on both the concept of using a sub-goal, and on the disabilities that should be included in such a sub-goal; and
- The use of a utilization range rather than the fixed 7 percent national goal the NPRM proposes. OFCCP seeks comment on a range of values between 4 percent and 10 percent.

## Submitting Comments

OFCCP invites the public to comment on the NPRM, either electronically at [www.regulations.gov](http://www.regulations.gov) or by mail or hand delivery to:

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All comments should include the identification (RIN) 1250-AA02, and must be received by February 7, 2012.

For more info, please go to [www.dol.gov/ofccp](http://www.dol.gov/ofccp).